FILE COPY
(D)
DEC 11 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA,
Petitioner,

v.

FEDERICO RIOS, a minor, etc.,
Respondent.

Petitioner's Reply Brief

EVELLE J. YOUNGER
Attorney General of the State of California

L. STEPHEN PORTER
Deputy Attorney General

VICTOR D. SONENBERG
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-3600
Attorneys for Petitioner

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

Page

Introduction 1

Argument 1

I. The Decision in *Rios v. Cozens* Was Made Under What The California Court Deemed The Compulsion of The Federal Constitution 1

II. The Case of *Rivas v. Cozens* Is Not Moot Because The Department of Motor Vehicles Is Deferring The Granting of Any Hearings Pending A Ruling by This Court 4

Conclusion 6

Appendices

TABLE OF AUTHORITIES CITED

Cases	Pages
Bell v. Burson, 402 U.S. 535 (1971)	3
Blair v. Pitchess, 5 Cal.3d 258, 486 P.2d 1242	4
Cline v. Credit Bureau of Santa Clara Valley, 1 Cal. 3d 908, 464 P.2d 125	4
Jankovich v. Toll Road Comm'n, 379 U.S. 487 (1965)	2
McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122	4
Mental Hygiene Dept. v. Kirchner, 380 U.S. 194 (1965)	2
Orr v. Superior Court, 71 Cal.2d 220, 454 P.2d 712 (1969)	3
Randone v. Appellate Department, 5 Cal.3d 536, 488 P.2d 13	4
Rios v. Cozens, 7 Cal.3d 792, 499 P.2d 979	1, 3, 4
Rivas v. Cozens, 41 U.S.L.W. 3271 (11/13/72)	1, 4
Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)	4
State Tax Comm'n v. Van Cott, 306 U.S. 511 (1939)	2

Statute	
Vehicle Code Section 16080.5	5

Rules	
Supreme Court Rule 24(4) and 24(5)	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA,
Petitioner,

v.

FEDERICO RIOS, a minor, etc.,
Respondent.

Petitioner's Reply Brief

INTRODUCTION

Pursuant to rule 24(4) and 24(5), this brief is being filed in reply to arguments raised for the first time in the brief in opposition (*viz.*: that *Rios v. Cozens* was decided on independent State grounds) and in response to this Court's decision in *Rivas v. Cozens,* 41 U.S.L.W. 3271 (11/13/72) which was not available at the time the Petition for Writ of Certiorari was filed herein.

ARGUMENT

I. The Decision in Rios v. Cozens Was Made Under What the California Court Deemed the Compulsion of the Federal Constitution.

The respondent contends that because in *Rios* the California Sureme Court cited (in addition to Federal cases) California cases which relied on *both* the State and Federal

Constitution, the Court must have been relying upon the State Constitution as an independent ground for decision (Brief for respondent in opposition, pp. 3-5). Such an argument ignores the explicit language to the contrary in *Rios*, and this Court's rule that it has jurisdiction to review cases in which "the federal ground has been the *sole* [Court's emphasis] basis for the decision, or the State Constitution was interpreted under what the state Court deemed *the compulsion of the Federal Constitution.*" (Emphasis added.) *Mental Hygiene Dept. v. Kirchner,* 380 U.S. 194, 198 (1965).

Initially, it should be pointed out that nowhere in the decision in *Rios v. Cozens* does the Court refer to the State Constitution as a basis for its decision, or even as an issue before it. And this despite the fact that respondent *Rios* urged below the State constitutional provision as grounds for the Court's decision (see Brief for respondent in opposition, p. 4, n. 2). Omission of the State Constitution as a stated basis for its decision, *even though* such basis was urged by the prevailing party, would appear to be a cogent indicator that the Court was *not* relying on the State Constitution as the basis for its decision.[1]

But even more persuasive of the conclusion that the State Supreme Court reached its decision under what it "deemed the compulsion of the Federal Constitution" is its explicit language to that effect.

---

1. In *Jankovich v. Toll Road Comm'n,* 379 U.S. 487 (1965), cited by respondent in his brief (p. 5, n. 3; p. 6), the State court expressly cited the applicability of State law as an issue in the case before it (379 U.S. at 489-490). And see especially *State Tax Comm'n v. Van Cott,* 306 U.S. 511 (1939), also cited by respondent (Brief in opposition, p. 5, n. 3), where even though the State court *did* expressly declare the applicability of State law to be one of the issues, this Court was nonetheless persuaded by additional language in the decision that it was reached under the constraints of the Federal Constitution and U.S. Supreme Court decisions (306 U.S. at 514).

At the outset, the State Supreme Court notes that *Orr v. Superior Court,* 71 Cal.2d 220, 454 P.2d 712 (1969), *upholding* the procedure presently in question, was decided by it two years before *Bell v. Burson,* 402 U.S. 535 (1971), was decided by this Court. *Rios v. Cozens,* 7 Cal.3d 792, 796; 499 P.2d 979, 982. The Court, after viewing *Bell* as requiring a hearing to determine the issue of culpability, then stated: "We are called upon, then, to examine the procedure followed in this state to determine *if it satisfies the requirements* of *Bell v. Burson* . . . ." (Emphasis added.) *Rios v. Cozens, supra,* 7 Cal.3d at 797, 499 P.2d at 982. The Court then said: "We conclude that this procedure does not comply with the *command* of *Bell v. Burson* . . . that a hearing be granted prior to license suspension for a failure to comply with the financial responsibility law." (Emphasis added.) *Rios v. Cozens, supra,* 7 Cal.3d at 798, 499 P.2d at 983. See also 7 Cal.3d at 794, 499 P.2d at 980-981. Indeed, a more explicit declaration of deference to this Court's Federal constitutional holdings could hardly be formulated; *i.e.,* that it was *Bell v. Burson* that "compelled" the Court to overrule the decision it issued just two years before.

Thus, because of its omission of any reference to the State Constitution as a basis for its decision and because of its express declaration that it was the *"command"* of *Bell v. Burson* that governed the procedures in question, there can be no doubt that the California Supreme Court's decision in *Rios v. Cozens* was made under what it "deemed the compulsion of the Federal Constitution."[2]

---

2. Indeed, the four State court decisions cited in *Rios,* which respondent views as evidence of the Court's reliance on independent State grounds (Brief in opposition, pp. 3-4), were themselves clearly decided under "compulsion of the Federal Constitution." In each one of these four cases, the State Supreme Court explicitly declared that it was the *United States* Supreme Court's construction

II. The Case of Rivas v. Cozens Is Not Moot Because the Department of Motor Vehicles Is Deferring the Granting of Any Hearings Pending a Ruling by This Court.

In *Rivas v. Cozens*, 41 U.S.L.W. 3271 (11/13/72), this Court quoted the appellants' statement that they "have now been accorded the opportunity for a personal evidentiary hearing regarding the suspension of their driver's license."

This statement is incorrect. The Department of Motor Vehicles, with the very problem of mootness in mind, has pointedly refrained from affording hearings since the decision in *Rios v. Cozens*, 7 Cal.3d 792, 499 P.2d 979 (1972), and instead has stayed any orders suspending licenses, pending the outcome of the *Rios* and *Rivas* cases. When a hearing has been requested or when the Department notifies one that it intends to suspend a license under the financial responsibility law, it notifies the licensee as follows:

> "The Department has made a determination that there is a reasonable possibility of a judgment being ren-

---

of the due process clause in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), that compelled the invalidation of the State statutes. For example in *McCallop v. Carberry*, 1 Cal.3d 903, 464 P.2d 122, the court said: "We are persuaded that this type of prejudgment wage garnishment falls within the rationale of *Sniadach*, and must be held to constitute a taking of property in violation of procedural due process." *McCallop v. Carberry, supra*, 1 Cal.3d at 907, 464 P.2d at 125. And again in *Cline v. Credit Bureau of Santa Clara Valley*, 1 Cal.3d 908, 464 P.2d 125, it was stated: "the prejudgment wage garnishment procedure attacked by plaintiff must be ruled invalid under the rationale of *Sniadach*." *Cline v. Credit Bureau of Santa Clara Valley, supra*, 1 Cal.3d at 909, 464 P.2d at 126. And as if to dispel any doubt on this point, the State Supreme Court in *Randone v. Appellate Department*, 5 Cal.3d 536, 488 P.2d 13, declared: "We do no more here than follow the principle of *Sniadach*, as later expressed in our own cases of *McCallop*, *Cline* and *Blair*." *Randone v. Appellate Department, supra*, 5 Cal.3d at 564, 488 P.2d at 32. See also *Blair v. Pitchess*, 5 Cal.3d 258, 277; 486 P.2d 1242, 1255.

dered against you as a result of the above accident and for the amount stated.

You may request a hearing should you wish to challenge the Department's determination pending a final decision on the appeal before the United States Supreme Court in the case of Rios vs Cozens.

If a hearing is requested within 14 days, the suspension(s) resulting from the accident will be stayed pending a decision by the court. Keep the Department notified of any change of address.

Failure to make a written request for a hearing within 14 days from the date of this letter is a waiver of the right to a hearing.

This notice applies only to actions taken under the Security Following Accident Law and does not affect suspensions or revocations under any other provision of the law."

(A sample copy of a typical notification is attached hereto as Appendix A.)

It is thus clear that the Department is maintaining the status quo and has done nothing with respect to Mr. Rivas or any other member of the class, which would render the matter moot.

We would also bring to the Court's attention that the State Legislature has now ratified the action of the Department of Motor Vehicles by passing legislation that holds the license suspension provisions of the financial responsibility law in abeyance until this case is determined by this Court. Veh. Code § 16080.5. (A copy of this bill is attached hereto as Appendix B, and as of this writing, the bill is on the Governor's desk awaiting signature.)

It is thus apparent that the case of *Rivas v. Cozens* is still viable and not moot.

CONCLUSION

For the above reasons it is respectfully submitted that respondent's opposition to the petition for certiorari pending herein is without merit and that said petition should therefore be granted.

Dated: December 8, 1972

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the
State of California

L. STEPHEN PORTER
Deputy Attorney General

VICTOR D. SONENBERG
Deputy Attorney General
Attorneys for Petitioner

Appendix A

DEPARTMENT OF MOTOR VEHICLES—[Letterhead]

NOTICE OF
CALIFORNIA SUPREME COURT DECISION

Accident:
Location:

The Department has made a determination that there is a reasonable possibility of a judgment being rendered against you as a result of the above accident and for the amount stated.

You may request a hearing should you wish to challenge the Department's determination pending a final decision on the appeal before the United States Supreme Court in the case of Rios vs. Cozens.

If a hearing is requested within 14 days, the suspension(s) resulting from the accident will be stayed pending a decision by the court. Keep the Department notified of any change of address.

Failure to make a written request for a hearing within 14 days from the date of this letter is a waiver of the right to a hearing.

This notice applies only to actions taken under the Security Following Accident Law and does not affect suspensions or revocations under any other provision of the law.

DEPARTMENT OF MOTOR VEHICLES

(General Hearing Notice)

Appendix B

CHAPTER .....

An act to add Section 16080.5 to the Vehicle Code, relating to financial responsibility, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 748, Conrad. Financial responsibility.

Requires that any proceeding or order of the Department of Motor Vehicles, relating to the suspension of the driver's license or driving privilege of any person, or the registration card or license plates for any vehicle owned by any person, pursuant to specified provisions of the Vehicle Code re financial responsibility laws which otherwise require such suspension, be stayed by the receipt by the department of a request from such a person for a hearing. Requires, upon the receipt of any such request, the department to refund any security deposited by such person.

Requires that such provisions remain in effect pending a decision by the United States Supreme Court regarding the constitutionality of the procedures of the department relating to the suspension of drivers' licenses and driving privileges.

Provides that if the United States Supreme Court decides that the department's procedures re driver's license and vehicle registration suspensions for failure to post security following a vehicular accident afforded due process and were constitutional, the department shall resume proceedings and the issuance of suspension orders pursuant to such specified provisions 30 days thereafter or as soon thereafter as possible. Provides that if the department's procedures are found by the court not to afford due process and hearings are required to provide for calling of wit-

nesses or the taking of oral testimony, the provisions of this act re the stay of department proceedings and orders shall remain operative until amended or repealed by the Legislature.

To take effect immediately, urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16080.5 is added to the Vehicle Code, to read:

16080.5. (a) Any proceeding or order of the department pursuant to subdivision (c) of Section 16053, or Section 16080, 16100, or 16484, relating to the suspension of the drivers' license or driving privilege of any person, or the registration card or license plates for any vehicle owned by any person, shall be stayed by the receipt by the department of a request from such person for a hearing. Upon the receipt of any such request, the department shall refund any security deposited by such person.

(b) The provisions of subdivision (a) shall remain in effect as provided in this subdivision pending a decision by the United States Supreme Court regarding the constitutionality of the procedures of the department relating to the suspension of drivers' licenses and driving privileges. If the United States Supreme Court decides that the department's procedures approved by the federal court in the case of Rivas v. Cozens (1971), 327 F. Supp. 867, and in use prior to the decision of the California State Supreme Court in the case of Rios v. Cozens (1972), 7 Cal. 3d 792, afforded due process and were constitutional, the department shall resume proceedings and the issuance of suspension orders pursuant to subdivision (c) of Section 16053, and Sections 16080, 16100, and 16484 30 days thereafter or as soon thereafter as feasible, as reasonably determined by the department, and subdivision (a) of this section shall no longer have any force or effect. If the department's procedures in use prior to the case of Rios v. Cozens are

found by the court not to afford due process and hearings are required to provide for calling of witnesses or the taking of oral testimony, the provisions of subdivision (a) shall remain operative until amended or repealed by the Legislature.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The Department of Motor Vehicles is required to issue orders of suspension of drivers' licenses or driving privileges, and registration cards and license plates, pursuant to subdivision (c) of Section 16053 of, and Sections 16080, 16100, and 16484 of, the Vehicle Code, in the administration of Chapters 1 (commencing with Section 16000), 2 (commencing with Section 16250), and 3 (commencing with Section 16430) of Division 7 of the Vehicle Code.

A three-judge United States district court in the case of Rivas v. Cozens (1971), 327 F. Supp. 867, determined that the existing procedures of the Department of Motor Vehicles in the administration of such provisions were sufficient to afford due process to the persons affected.

However, the California State Supreme Court thereafter rendered a contrary opinion in the case of Rios v. Cozens, (1972), 7 Cal. 3d 792, which opinion requires the Department of Motor Vehicles to provide an opportunity for an extensive hearing to an uninsured motorist prior to suspending his driving privilege under the applicable statutes.

The Department of Motor Vehicles does not now have sufficient funds budgeted to conduct full scale or extensive hearings on the issues to be determined by the Department

of Motor Vehicles nor adequate trained personnel to conduct such hearings.

The cases of Rivas v. Cozens and Rios v. Cozens are currently on appeal and pending before the United States Supreme Court to resolve the conflicts between the cases.

Pending the decision of the United States Supreme Court, the Department of Motor Vehicles is placed in a difficult and untenable position in administering existing provisions of law because of these circumstances. Thus, it is necessary that this act, which is intended to specify what course of action should be taken by the Department of Motor Vehicles until such decision is rendered, go into immediate effect.